

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. BAILLIEUL and DEPARTMENT OF ENERGY,
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT, Cincinnati, Ohio

*Docket No. 97-2333; Submitted on the Record;
Issued April 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on February 28, 1996, as alleged.

In a decision dated April 11, 1997, the Office of Workers' Compensation Programs accepted that appellant experienced the incident alleged but found that appellant failed to submit competent medical evidence to support that the incident caused an injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim.² When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such a event, incident or exposure caused an injury.³

The Office accepted that appellant experienced the event or incident to which he attributed his back condition but denied his claim for failing to establish that the incident caused an injury. Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

¹ 5 U.S.C. §§ 8101-8193.

² See *Margaret A. Donnelley*, 15 ECAB 40 (1963).

³ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

To support his claim, appellant submitted the March 17, 1997 report of Dr. Bruce D. Aldrich, a chiropractor. He did not report that he took or reviewed an x-ray of appellant's spine and he did not diagnose a subluxation.

Section 8101(2) of the Act⁸ provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."⁹

Because Dr. Aldrich did not diagnose a subluxation from an x-ray, he is not considered a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence to support appellant's claim.¹⁰ Without having submitted a competent medical opinion or evidence explaining how the employment incident caused or aggravated his diagnosed back condition, appellant has failed to discharge his burden of proof.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ 5 U.S.C. § 8101(2).

⁹ *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services).

¹⁰ *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

The April 11, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
April 26, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member